ANDREW T. JUDSON'S

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REMARKS,

To the Jury, on the trial of the Case,

STATE v. P. CHANDALL.

Superior Court, Oct. Term, 1833.

WINDHAM COUNTY, C.

HARTFORD:
JOHN RUSSELL, PRINTER.

The information, State *vs.* Prudence Crandall, was filed in the Superior Court, Oct. erm, 1833, held by the Hon. DAVID DAGGETT, Chief Justice.

The facts charged against the defendant were harboring and boarding colored per- ns, not inhabitants of the State of Connecticut, in violation of the *act* of the last Ses- n of the General Assembly.

Plea—Not Guilty.

After the evidence closed, the case was opened on the part of the State, as follows

Gentlemen of the Jury:

The subject matter of this cause, has been much misunderstood by some, who were honest, and so much perverted by others, less entitled to that appellation, you will allow me for the purpose of preventing all future misapprehension, and staying the current of unjustifiable reproach, attempted to be cast upon our native State, to say, that the legislators who enacted this law, and the people who support it, are not opposed to the *education* of the black population, as you may have so often heard reiterated by those who love to put darkness for light. The law rests upon no such basis, and will not be supported upon any such principle.

The people of Connecticut have done more for the *education* of the blacks, than has been done in any other portion of the civilized world. It is a matter of congratulation with us, that *all the black* children have the same and equal privileges, at all our common schools, with the *white* children. Nay more, they are admitted to all our district schools, nearly 1500 in number, supported entirely by the school fund, which exceeds one million eight hundred thousand dollars. They are indeed admitted upon better terms than the white children. The white inhabitants are taxed for *school houses*—*they* board the instructors—*they* furnish the wood, while the colored population are exempt from all these burthens, and then participate equally in all the benefits and blessings of the school fund. No other State in this Union has done any thing like this, yet some of them are quite liberal in abusing us. I wish you particularly to understand, that in supporting *this* cause, and *this* law, I do not oppose the *education* of the people of color, but I do oppose the importation of blacks from other countries, for any purpose. There is also one other topic, to which I would advert for one moment, and upon that too, I desire not to be misunderstood, and for the purpose of placing it out of the power of any one, to put a false construction upon my sentiments or my opinions, I deem it my duty to remark, that I am no advocate or apologist for slavery. I lament its existence, and regret its evils as much

as you can. It was the policy of our fathers to rid the State of the evils of slavery, and as early as 1784, they began this great work, and long since, by wise and salutary laws, this State took its rank as a "free state," among her sister States. This work was done by State legislation. In its own sovereign capacity, freedom was given to the slave. Those who may be acquainted with the history of events know, that the States south of the Potomac came not here to prevent this philanthropic reformation within *our* State. The constitution of the United States *does* recognize slavery, and leaves it with every state to continue, regulate, or abolish it, at their pleasure. One State cannot interfere with another State, in this matter, any more than she can in the election of its state officers. To admit the proposition that we can authorize an interference with Virginia because she does not see fit to liberate her slaves, will be giving Virginia the same power to come hither and say to Connecticut, you shall be a slave state! To instruct and educate missionaries, to go there for the purpose of disturbing their tranquility, and teaching the massacre of their inhabitants, would prove a sad business for us. If there are any among us, who feel it their duty to alleviate the condition of the slave, let them go where that slave is, and address the master. Let them go to that government where laws tolerate slavery, and read to that government, their moral lessons. If too cool or cowardly to do this, their philanthropy is not worth possessing.

There are indeed a few individuals in New England, who "*would prefer to see the constitution torn into a thousand atoms, rather than live under it, so long as it tolerates slavery.*" But these mistaken men, should be informed, that by dissolving the Union, they cannot abolish slavery—they would only make it perpetual. There are now twelve free, and twelve slave states, in the Union, and as the Constitution cannot be amended except by the consent of three quarters of the States, it is evident this matter must be left, where the framers of the Constitution left it, *with each State*, or *force* must be the resort. If the time has indeed arrived, when the citizens of New England are to go deliberately at the work of dissolving the Union of the States and a Jury of the County of Windham is to begin that work, then we will so understand it. For one, I will enter my protest at the outset, and call upon you, as a branch of that government under which we have enjoyed so much prosperity, to do the same, by your verdict. The law in question is not made to promote the interest of slave holders, for we have none in our State. It is not made to perpetuate the evils of slavery, for there is not a man in the State of Connecticut who is in favor of slavery. I admit there are many, and that I am of that number, who would not break up

the union of the States, as an experiment to abolish slavery at the South. I would prefer to leave this matter to the moral sense of that portion of the Union who now deem it their right to hold slaves. New England has nobly discharged its own debt, and she ought not to incur another, by dissolving the Union, for then slavery would be perpetuated for ages to come, where it now exists.

Having made these preliminary remarks, I will now invite the attention of the Jury to the case in question.

The *information* filed by the Attorney for the State, charges Prudence Crandall, the defendant, with the violation of a law passed at the last session, entitled "An Act in addition to an Act, entitled an Act for the admission and settlement of inhabitants in Towns." The particular facts charged in this case, are, that the defendant, wilfully and knowingly did harbor and board, for the purposes of instruction, within a school by her set up, in the town of Canterbury, certain *colored persons not inhabitants of this State*, and that the defendant did so harbor and board them after the 22d day of August, 1833, to wit: On the 24th day of September, 1833, for the purposes mentioned in said Act. The first question relates to the facts in the case. It is incumbent on the State, to prove beyond reasonable doubt, that the defendant has done the acts charged in the information. Unless *this* is proved, it is your duty to acquit the defendant.

On the part of the State it is claimed, that these facts are proved, beyond doubt or contradiction. You learn from the evidence, that a school has been set up in the town of Canterbury, by the defendant, for the purpose of instructing colored persons, who are not inhabitants of this State: or in other words, for colored persons from other States, and other countries, and that in point of fact, since the 22d day of August last, she has admitted into that school, and instructed therein, the following persons, all of whom are not inhabitants of this State, viz: M. E. Carter, Sarah Hammond, A. E. Hammond, C. A. Weldon, Emila Willson, Eliza Weldon, C. G. Marshal, Maria Robinson and Elizabeth Henly. One is from Pennsylvania, some from New York, and the residue from Rhode Island.

The colored girls who have been sworn, testify that they have been members of the school, at all times since the 22d of August, and on the day specified in this information, and that the above named *foreign persons of color*, have been harbored and boarded by Miss Crandall, and have been instructed by her in the school. They also tell you where these girls belong. In addition to this, Asael Bacon and Ebenezer Sanger, Esquires, two of the select men of the town of

Canterbury, tell you that the defendant gave the names of these girls to them, with the place to which each belonged.—One girl has testified that the defendant went to New York and Philadelphia, and some of the girls by her named, returned with her. This evidence is proper to show you, that the defendant has *knowingly* harbored these foreigners, against the provisions of this act. The defendant has introduced no evidence, and of course, the testimony offered by the State, stands uncontradicted. You are therefore to decide upon its weight, and if on considering this testimony, you entertain any reasonable doubt, you will say the defendant is not guilty, and the State must abide by your verdict. If you should believe from this evidence, that the facts are proved, as charged, then another duty will be suggested by the learned and ingenious counsel for the defendant. They have intimated to us, that their defence will rest on the *unconstitutionality* of the law. They have told us, on a former trial, and will tell you now, that the Legislature of this State do not possess the power to make this law. And as we have had this defence so fully developed, it will become my duty, even in the opening of this case, to present to the jury, the honest convictions of my own mind, on this important question, and then leave it with their intelligence to pronounce such verdict, as shall be deemed proper.

I shall have no hesitation to admit, that a law made by any State in the Union, in *violation* of the Constitution of the United States is a dead letter, and must be so declared by that judicial tribunal having cognizance of the matter.

I shall admit also, that in a case called criminal, and in prosecutions on penal statutes, like the present, the jury are the judges of both law and fact. In criminal cases the court can advise the jury, but cannot direct them how to find. As the Constitution of the United States is the supreme law, I shall admit again, that the jury may decide upon the constitutionality of this law. I have made these admissions frankly, so that the real question between us, may stand upon its own merits, and if the law is indeed inconsistent with the Constitution, I would not have it executed, upon any individual. Let me ask your attention to the law itself which reads as follows.

"An act in addition to an act, entitled an act for the admission and settlement of inhabitants in towns.

Whereas attempts have been made to establish literary institutions in this State for the instruction of colored persons belonging to other States and countries, which would tend to the great increase of the colored population of the State, and thereby to the injury of the people: Therefore

Sec. 1. *Be it enacted by the Senate and House of Representatives, in General Assembly convened*, That no person shall set up or establish in this State any school, academy, or literary institution, for the instruction or education of colored persons who are not inhabitants of this State, nor instruct or teach in any school, academy, or other literary institution whatsoever in this State, or harbor or board, for the purpose of attending or being taught or instructed in any such school, academy, or literary institution, any colored person who is not an inhabitant of any town in this State, without the consent, in writing, first obtained of a majority of the civil authority, and also of the select men of the town in which such school, academy or literary institution is situated; and each and every person who shall knowingly do any act forbidden as aforesaid, or shall be aiding or assisting therein, shall, for the first offence, forfeit and pay to the treasurer of this State, a fine of one hundred dollars, and for the second offence shall forfeit and pay a fine of two hundred dollars, and so double for every offence of which he or she shall be convicted. And all informing officers are required to make due presentment of all breaches of this act. *Provided*, That nothing in this act shall extend to any district school established in any school society, under the laws of this State, or to any school established by any school society under the laws of this State, or to any incorporated academy or incorporated school for instruction in this State.

Sec. 2. *Be it further enacted*, That any colored person, not an inhabitant of this State, who shall reside in any town therein for the purpose of being instructed as aforesaid, may be removed in the manner prescribed in the sixth and seventh sections of the act to which this is an addition.

Sec. 3. *Be it further enacted*, That any person not an inhabitant of this State, who shall reside in any town therein, for the purpose of being instructed as aforesaid, shall be an admissable witness in all prosecutions under the first section of this act, and may be compelled to give testimony therein, notwithstanding any thing contained in this act, or the act last aforesaid.

Sec. 4. *Be it further enacted*, That so much of the seventh section of the act to which this is an addition, as may provide for the infliction of corporeal punishment, be, and the same is hereby repealed."

There are several provisions of this law, which have been entirely misunderstood, to say the least. Upon the face of this statute, *you* will readily see, that it has no relation whatever to those colored persons who *belong* to Connecticut. It leaves all those precisely where they were before the passage of the act. All negroes, molattoes or other colored persons

born in Connecticut, or who have gained a settlement in Connecticut, in any way, are not subject to the provisions of the act, and any person may set up a school for *them*, because they *belong* to this state, and we are not only bound, but are willing to educate them, let the tax be what it may. If other states would do as much, *all* the blacks might be educated.

In the next place, the jury will notice, that all *district schools, all schools established by school societies—all academies and colleges incorporated by this State*, are exempt from the provisions of this act, so that all colored persons wherever they may belong, foreigners, as well as natives—those coming from other States and other countries, as well as all those who were born in this state, have free access, under this law, to all district schools, academies and colleges within the State.

The only operative provision of the law complained of by the defendant, is, that a penalty is imposed on those of our own citizens, who may harbor, board and instruct foreign blacks *without first obtaining from the civil authority and Select Men of the town, their consent in writing.*

It may be added, if that consent is obtained, then the penalty is removed, and the schools for *foreign* blacks may be kept in any town. This in effect leaves the matter of harboring *foreign* blacks, to the towns themselves. And the subject is left under their control, where it should be. In substance then, this law merely provides, that schools for *foreign blacks*, shall be under the control of a board of visitors, and that board is the civil authority and Select Men. Other schools are to be visited and examined, and why not this?—If persons from abroad are to be brought into our State, under the pretence of education, what harm can there be, in creating a board of visitors for that school, as well as for a common district school for the instruction of the children, whose parents live within the State? It is a *regulation* of the school, and it will be found at some future day, to be a regulation essential to the existence of the State.

This is the law upon which this information is founded, the alleged breach of which, has been proved against this defendant. The defendant by her counsel now tells you, this law is unconstitutional, and therefore void. To sustain this defence the 2d section of the 4th article of the Constitution of the United States is to be brought before you. I will so far anticipate that defence, as to read you this section. It is as follows, viz.

"The *citizens* of each State, shall be entitled to all privileges and immunities of *citizens* in the several States."

To shew you that this law of Connecticut does not violate this section of the Constitution, I shall have occasion to call the attention of the jury to three propositions

I. It is believed by some, that the section just read, has a special reference to the action of the General Government and none whatever, to the laws of a particular State.—That by the laws of Congress, equal and exact justice should be measured out alike to the citizens of all the States, because those citizens are all equally bound to sustain that government, and therefore have equal claims to the distribution of its favors and blessings. Not so with the States. They are sovereign and also distinct governments, having retained all power, not expressly given and imparted to the General Government.

In support of this proposition I can refer you to what was said concerning this section, in the 52d No. of the Federalist, page 267, written by *Mr. Madison*, one of the framers of this Constitution From his exposition of this section, it would seem that this was a substitute for the 4th article of the *Confederation*, and relates solely to the matters of naturalization which is committed to the Congress of the United States and taken away from the State governments, by the Constitution. But upon this point I will not dwell, because there are other claims which may be presented with more confidence, to your consideration.

II. This law is not unconstitutional, because the State of Connecticut has never surrendered to the General Government its power to regulate schools within its own limits. The same distinguished author, just quoted, page 292, same volume, makes the following just comment upon the powers surrendered, and the powers retained. "The powers delegated by the proposed Constitution, to the federal government, are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negociation, and foreign commerce; with which last, the power of taxation, will for the most part be connected. The powers reserved to the several States, will extend to all the objects, which in the ordinary course of affairs, concern the lives, liberties, and properties of the people: and the *internal order*, improvement and *prosperity* of the State."

The *internal order* of a State, depends much on *schools* and *education*. Its *internal* prosperity too, may be said to depend mainly upon the regulation of schools. The whole subject requires minute and special care, and would in its details be impracticable by the General Government. It never was imparted to that government. This State, in particular, may boast of its care over education, and its superintendence of schools. It belongs to our early history, and is the foundation of all our glory, that our schools have been under the watchful eye, and faithful guardianship of legislative action,

and visatorial power of the State. When Yale College, which has been the pride of our State, and from whence have issued so many annual streams of mental brightness, was established, the visatorial power was committed to a board of trustees, a part of whom were composed of legislators annually elected. The two succeeding colleges, and every incorporated academy, has a board instituted to have a direct power over instructors. Should any of the instructors in these high schools or colleges, attempt to disseminate the principles of immorality, or equally dangerous principles of treason against our government, such men, and such instructors would feel, as they should do, the power of these boards of visitors. The common district schools in every town are required to be visited, and the instructors must be approved of by a board of visitors. And why let me ask, should a school for foreign colored persons, be free from visitation, and subject to no restraint? It would seem to me, of all others, most to require it. Is it not a little remarkable that as early as 1717 the General Assembly of this State passed an act in the following words, regarding schools. "The civil authority, together with the Select Men, in every town, or the major part of them, shall inspect, and they are hereby empowered and directed, as visitors to inspect the state of all such schools, as are by this act appointed to be kept, within said towns from time to time, and particularly once in each quarter of a year, and inquire into the qualifications of masters. And they are to give such directions, as they shall find needful, to render such schools most serviceable for the increase of knowledge, religion and good manners. And if said inspectors or visitors observe any such *disorders*, or misapplications of money, allowed for the support of such schools, as will be likely to defeat the good ends proposed, they shall lay the same before the General Assembly, that proper orders therein may be given." By that act, which continued in force about 80 years, the select men and civil authority were continued a board of visitors, and as we all know, for mere convenience, in the year 1799, visitors elected by school societies were substituted, and now possess the same powers.—The act of last session very properly selects the *ancient board*, for this obvious reason, that there is a two fold interest involved, the existence of schools, and the introduction of foreigners. The select men and civil authority were supposed to be the better board, because the interest of the whole town might be concerned, and as the school societies were often composed of parts of towns, and different towns, the *visitors* would not become as suitable as the *ancient board*. It was their duty under the old law to observe any such *disorders*, as might be likely to defeat the good end proposed, so under

this law, if they should observe any such *disorders*, as would tend to disturb the union—the inculcation of any such wicked principles as might hazard the peace of community, the select men and civil authority might withdraw their licence, and leave the person thus treating the government under which they live, to the penalties of the law. Every State in the union has with an uninterrupted course of legislation regulated *their* schools, and this is surely the first instance of calling in question the validity of *school laws*, whatever they may have been. This long course of legislation is to my mind, high evidence, that the subject of schools and education was left entirely to the States.

I will lay before you the laws of Massachusetts on this subject. These laws are collected by Dr. Dwight, and you will find them in the 4th volume of his travels, page 503, with very appropriate comments. "All instructors of the university, colleges, academies, and schools, *and all private instructors* are required to take dilligent care, and exert their best endeavours to impress on the mind, of the children and youth, the principles of piety, justice, and a sacred regard to truth, *love to their country*, humanity and universal benevolence, sobriety, industry and frugality, chastity, moderation and temperance, and all other virtues, and to shew them the tendency of these virtues to secure the blessings of liberty, and the tendency of the opposite vices to slavery and ruin. The select men were to determine the qualification of masters and also those which fit children to enter into the grammar schools. Districts to forfeit from 10*l* to 30*l* if they did not comply. With respect to other schools [private] not contemplated in these provisions, it is enacted that no person shall be a master or mistress of any school, and keep the same without obtaining a certificate, as in other cases, under a penalty of 20 shillings. The duty of every master and mistress of every private school is made the same as the public schools. It is further enacted, "if a person who is not a *citizen*, shall keep a school in the Commonwealth for one month, he shall be subjected to a fine of 20*l*." Grand jurors are diligently to inquire and presentment make of all breaches and neglect of the act.

By these laws you will perceive, that it has been the policy of Massachusetts to put all her schools, both public and private, under the superintendence of the board of select men. And they go so far as not to allow any but *citizens* to instruct their schools.

In Connecticut, education has been our pride and boast. We are small in territory but rich in science. All our strength and glory consists in the superior advantages of education to our inhabitants. We have a school fund, provid-

ed by the wisdom of the State, amounting to one million eight hundred thousand dollars, the annual interest of which, is distributed to all classes, rich and poor—black and white, *belonging to our State.* We have colleges, and academies scattered over the State, in greater perfection than any other State, or country on the earth. And why is it, that Connecticut has been so distinguished for education? The answer may be found in your Statute Books, from the earliest settlement of the colony. *Connecticut has kept her schools under strict visatorial power.* Why is it that our inhabitants are peaceable and moral? It is because our *schools* are under strict discipline, and when *disorders*—or bad sentiments are promulged—or treasonable doctrines are attempted to be thrown into the minds of youth, to poison and destroy them, then the visatorial power is put in requisition, and all is made right. What necessity is there, that *co'ored persons* from the West Indias, or Slave States, should be educated here and not have their instructors subject to the same care and inspection as the children of those who inhabit the State? If there be any such necessity, let it be shown to us.

In closing what I have to say on this topic, I do claim, that Connecticut, or any other State in the Union may enact such laws regarding education as their wisdom and prudence may dictate, and their laws will be binding upon the people.

III. There is yet a more important consideration. Should either or both the preceding propositions which I have presumed to advance, in support of this cause, be held untenable, then I have another, upon which I can look with great confidence, and which I feel justified in submitting to an enlightened Court and an honest Jury, whose love of our common country, and the honour of our native State, will secure to me a patient and candid hearing.

You will perceive that this law is assailed, because there is another law above it, in these words—"The *citizens* of each State shall be entitled to all privileges and immunities of *citizens* in the several States."

We are told on this trial, and you are called upon to decide, that persons of color are *American citizens*, within the meaning of this section of the Constitution, and therefore a law of Connecticut, which requires that schools set up for *coloured persons*, not inhabitants of this State, without the consent of the board named in that act, is a violation of this Constitution. I am willing to meet this argument at the threshold, and, without evasion, answer it in such manner as shall be satisfactory to the court and jury.

Coloured persons are not citizens, within the meaning of that term, as technically used in the Constitution. The gentlemen bring us to the construction of this section, and this

single term *citizen*, and would have the case turn upon that point. I am content that it should be so, and will now proceed to show you why I shall ask you to come to a different result. We must go back to the period when the Constitution was framed, and take into consideration the circumstances and condition of the country, the different races of men, and their conditions, and looking through the whole instrument, call to our aid also, such other cotemporaneous acts, as might have existed, then we may derive the true construction, and the only construction to be given to the term. It is quite immaterial how that term may have been used upon other occasions, or how it may be understood in common parlance at the present day. The real question is, what did the framers of the Constitution mean, when they said in such concise and emphatic language, "the *citizens* of each State shall be entitled to equal privileges and immunities of citizens of the several States"?

From a thorough examination of this question, I am brought to the irresistable conclusion, that at the time when the Constitution was formed, it was very far from the intention of those members of the Convention to include *blacks* under the term *citizen*. This may be proved by the *acts of Congress*—by the *Constitutions of most of the States*—by the *course of legislation* adopted and uninterruptedly pursued by the States, since the adoption of the Constitution, and by *judicial decisions*.

Soon after the government was formed, under the new Constitution, Congress began to legislate, and in 1790, that Congress being composed of several of those who framed the Constitution, in carrying into full effect that provision which directs Congress to "establish a uniform rule of naturalization," passed their first act on this subject, to make *American citizens out of aliens*. This precise and technical language is there used—"Any alien, being a free *white person* may become a *citizen* by complying with the requirements after named." In the law of 1795, the same language is used. "A free *white person* may become a *citizen*." Similar laws were passed in 1798—in 1802, 1813, and in 1824, without the least variation of phraseology. It will be a given point, that a *foreign* black person cannot be naturalized, so as to become a *citizen*; and let him reside in what state he may, such person can never enjoy equal privileges and immunities with the white citizens. Any *white* person coming from a foreign country, can be made a citizen by naturalization, but a *black one cannot*. Here is clearly and undeniably a distinction of colour; but here the argument on the other side will present to the understanding of every man this gross absurdity. A black person arrives from Cuba, and makes application for

naturalization, for *he* wishes to become a *citizen*. He is denied this right on account of his color. The law is so, and he never can become a *citizen*. This person has a child born here, of the same colour, and according to the claims on the other side, this black child is a *citizen* of the United States, because of his birth! Congress were however not mistaken when they supposed the spirit of the Constitution gave to *white* persons alone the right of citizenship.

In all subsequent laws of Congress, no colored person can be in any way engaged in transporting the mail, or in the management of the post office concerns. Many consider it a privilege and an immunity too, to transport the U. S. mail. It gives employment to many persons—it supports many families, and yet a person of colour, however honest or capable, is cut off from all these employments, and upon what ground? Because of his color. Surely Congress ought to make laws giving equal privileges to all American citizens. Upon the ground claimed in opposition to the Connecticut law, these laws of Congress are unconstitutional, and notwithstanding their provisions, a black man may maintain his rights to these privileges before a court of justice!!!

Chancellor Kent settles this question beyond cavil. Vol. 2, page 72. "The act of Congress confines the description of aliens capable of naturalization to 'free white persons.' I presume that this excludes the inhabitants of Africa and their descendants; and it may become a question, to what extent persons of mixed blood, as mulattoes, are excluded, and what shades or degrees of mixture of color disqualify an alien from application for the benefits of the act of naturalization. Perhaps there might be difficulties also as to the copper-colored natives of America, or the yellow or tawny race of Asiatics, though I should doubt whether any of those were 'white persons,' within the purview of the law. It is the declared law of New-York that Indians are not *citizens*, but distinct tribes, being under the protection of the government, and consequently never can be made citizens under the act of Congress."

The Indians of America were born upon the soil we now possess—they are *native men*—they were the proprietors of this whole country, now occupied by white men—and of all others, if birth alone made and constituted *citizenship*, it ought to be yielded to the Indian. If we owe a debt to the Africans, how is that obligation swelled to the Indians, when we view the remnants of those mighty nations, who have been driven away by the power of civilization and arms?

And yet, the defendant's counsel must admit that Indians are not citizens. They are not such within the meaning of that term, in the Constitution, and as Chancellor Kent says,

they cannot be made such. And why? The answer is obvious; they are *persons of color.* This term "citizen" was adopted by the Americans, because they used to be denominated *King's subjects*, and when they declared themselves free of the King's power, they adopted the Roman appellation *American "citizen."* That proud term means something more than a slave—it means a white man who can enjoy the highest honors of a republic, the privilege of choosing his rulers, and being one himself.

I prove my position also, by the Constitutions of the several States, enacted by the highest tribunal, the sovereign people. In many of these Constitutions it will be found that a difference of color is maintained. I am not now on the question of whether this is morally right or morally wrong, but only proving by these facts, what has been the uniform Construction of the term "*citizen*" since its use in the constitution.

This evidence will be so satisfactory, that you cannot fail to see, when you have nullified the law of Connecticut, as the defendant claims you should, your work is but just commenced. Your own State Constitution must be the subject of destruction. You must put your hand upon that also, and tear out of it so much as shall prevent colored persons from enjoying equal privileges and immunities with you. We shall all admit that the elective franchise is an "immunity and privilege," of the highest grade—it is *one* which all seek for, and find it necessary to attain in a free government, before its honors can be enjoyed.

By the Constitution of Connecticut, none but a *white male citizen* of the U. S. can be admitted an elector. This is the language of the Constitution. It is further provided in our Constitution that "no person who is not an elector of this State shall be eligible to the office of Governor. Should any one tell you, as we heard boastingly on the former trial, that "a black man had the same right to be Governor of the State as the white man," I would say in reply, this must be an assumption against the Constitution. Members of the House of Representatives must be *Electors*, and therefore colored men cannot be representatives.

I will call your attention to the provisions of other Constitutions.

Delaware. The Constitution of this State, is that in "elections every free *white* male citizen shall vote."

Maryland. "Every free *white* male *citizen* shall vote."

Virginia. "Every *white* male *citizen* of the Commonwealth, resident therein, shall vote."

South-Carolina. Every free *white man* may vote, &c.

Ohio. "All *white* male inhabitants" shall vote.

Louisiana. "Every free *white* male *citizen* of the United States" shall have right to vote.

Mississippi. "Every free *white* male person" shall vote, &c.

Illinois. "All *white* male inhabitants" shall vote. And "all *white* male inhabitants, resident at the adoption of the Constitution of Illinois, had right to vote on that question.

Alabama. "Every *white* male person" shall vote.

Indiana. "Every *white* male citizen of the U. S." may vote.

In all these States, and perhaps some others, constitutional provisions have cut off the black man from all participation in the affairs of government.

Rhode-Island, has defined the qualifications of *freemen*, and among those qualifications, a man must be *white* to become an *elector*.

In the State of New-York, a singular distinction of this matter of color is maintained. A *white* man is admitted to vote, without property, while the colored man is excluded, unless he shall have in real estate actually taxed, the value of $250.

From this mass of evidence, it must be manifest, that every one of these constitutional provisions is *void*, if colored persons are "*citizens*" within the 2d section of the 4th article of the Constitution of the U. S. And in that event every black man, and every mulatto would have a right to call them up for adjudication, on a writ of mandamus, that he might be made an *elector*, and so be in the way to be made a Governor or Judge, or Representative or Senator.

Gentlemen of the Jury—Your verdict is to do more than might be supposed in the first instance. You would not only nullify the law of Connecticut, and its sacred Constitution, but you would also afford an example for other States; nay, you would teach them by *your* solemn decision, that their laws and Constitutions were only dead letters. Do you regard the institutions of government, and the stability of those institutions as blessings, then I would conjure you to begin no such work—set no such example—presume to walk on no such dangerous ground, least its foundation sink beneath your feet, and plunge your country in inevitable ruin.

I will now endeavour to shew that the Legislatures of the several States, have by *their* solemn acts, put the same construction on the *section* in question, as I claim to be just. Some of these will relate to persons of color, others will relate to white persons who belong to *other States*, and come to participate in State privileges, and others still, will apply to distinct classes of unquestionable *citizens*. I shall consider these at the same time, for the purpose of shewing that distinctions are, and ever have been made, between *citizens* of

that State and those of another State, as well as between white persons and persons of color.

If persons come from other States into this, they shall enjoy equal privileges with us, *subject, nevertheless, to such limitations, as the good of the whole may require.*

In Connecticut persons who come from other States, and who are not inhabitants of this State, may be warned to depart, and may be *removed.* Persons entertaining them, or leasing property to them, incur a penalty.

By an antient law of the State now in force, and re-enacted since the Constitution, if a person comes here *from any other State*, and seeks to recover a debt or maintain an action to recover his rights or redress his wrongs, *he* cannot do it, nor step into any court of justice, until he shall persuade some *inhabitant of this State to be his bonds-man.*

A person coming from another State, cannot maintain a petition for divorce, until a residence of three years shall have been had in this State. A person not born here, and coming from any other State, can never become an elector or vote in town meetings, except on entire different qualifications required of citizens of our own State. A citizen of Connecticut may become an elector, in the town where he lives, the next day after he shall be 21, having performed military duty, or having paid a State tax on a single article of property of the smallest value, while a person from any other State must have owned, and actually possessed $335 dollars value in real estate, and have resided within this State one year. Here is a vast difference, but public good requires it should be made. These laws are upon the same principle as the laws of licences to physicians, lawyers, taverners, surveyors and retailers. All men have natural rights to pursue such business as their own ingenuity may suggest, but public policy requires that guards be thrown around them for public good—that restrictions be laid upon them for the general welfare.

The foreman of this jury, an eminent man in his profession, has a natural right to practice physic, but the law is so, without a licence, he can never recover his debt. A man may be well informed in the profession of the law, and may have the same natural right to pursue that business, as one of these foreign blacks has to go to the defendant's school, yet he cannot do it. Public policy requires that the Court should give him licence.

This is the case with regard to numerous articles of commerce, which you cannot send to market without an inspection. Although by the Constitution, Congress has power to regulate *commerce*, yet every State in the Union has its inspection laws, upon these very articles of commerce, for the general good of the whole. By the laws of Rhode-Island,

persons who have gained no settlement there, may be removed. So also in Massachusetts. The instances have not been unfrequent, of the removal of persons from one State to another, by process of law.

In the State of Rhode-Island I have noticed that *unsuitable* persons shall not gain a settlement, cannot hold real estate without *licence* from the Town Council, and these persons may be removed, leaving it to the Town Council to say who are "unsuitable" persons.

Bad houses shall not be kept by free negroes—they may be broken up, and the owners bound out, by the laws of Rhode-Island. According to the modern doctrines of equality, this law would be unconstitutional, for there is no such law for the "white citizen."

By the same laws intermarriages between white people and negroes are declared void, and the person celebrating any such marriage, shall forfeit $200.

The laws of Massachusetts also render void such marriages. If a citizen of Connecticut, being a white man, should go to Rhode Island, and fall in love with a black woman, and take her before a magistrate, and claim his "*privilege*" or insist upon his "immunity," on being denied, I see not but this minister might be brought up before the U. States Court, and compeled to marry the loving pair notwithstanding this law of Rhode Island.

There are numerous other legislative enactments, emanating from the States, which I might bring before you, but I have already trespassed too much upon your patience.

I have said that the position we assume, could also be maintained by a judicial decision. Allow me to refer you to that case.

It is reported in the 4th of Washington's Reports, page 371. *Corfield* vs. *Coryel*. It is a case in principle exactly similar to the one on trial. Indeed the Connecticut law is almost a copy of the law upon which that case proceeded. You will allow me to be minute in the report of this case. The Legislature of New Jersey passed the following Act. "That it shall not be lawful, for any person, who is not, at the time, an actual inhabitant, and resident in the State of New Jersey, to take or gather clams, oysters, or shells in any of the rivers, bays or waters, in this State, on board of any canoe, flat, scow or other vessel, not wholly owned by some person, inhabitant of, and actually residing in" [New Jersey.] Every such person offending herein, shall forfeit the sum of $10, and shall also forfeit the vessel.

The next section provides for the condemnation and sale of the vessel.

After this law of New Jersey was enacted, *Corfield*, the

Plaintiff, an inhabitant of New-York, sailed his vessel into one of the bays of New Jersey, and was there found, taking oysters. The defendant seized the vessel, and sold it under the act of New Jersey, as forfeited, and the plaintiff brought his action before the Circuit Court, of Pennsylvania, for damages. On the trial of that case, the plaintiff claimed the law to be in violation of the 2d section of the 4th article of the Constitution, in the same manner as will be claimed here. Judge Washington pronounced the opinion of the Court as follows.

"The 2d section of the 4th article declares, that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States. The enquiry is, what are the privileges and immunities of citizens in the several States? We feel no hesitation in confining these expressions to those privileges and immunities which are in their nature fundamental, and which have at all times, been enjoyed by the citizens of the several States, which compose this Union, from the time of their becoming free, independent, and sovereign. What those fundamental principles are, it perhaps would be more tedious, than difficult, to enumerate. They may however be all comprehended under the following general heads; protection by the government; the enjoyment of life and liberty; with the right to acquire and possess property of every kind; and to pursue and to obtain happiness and safety; *subject, nevertheless, to such restraints as the government may justly prescribe for the general good of the whole.*

"The right of a citizen of one State to pass through, or to reside in any other State for the purpose of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of habeas corpus; to institute and maintain actions of any kind in the Courts of the State; to take, hold, and dispose of property, real and personal; and an exemption from higher taxes or impositions, than are paid by other citizens of the State: may be maintained as some of the particular privileges and immunities of citizens which are clearly embraced by the general description of privileges deemed to be fundamental. to which may be added, the elective franchise, as regulated and established by the laws or Constitution of the State in which it is to be examined. *But we cannot accede to the proposition, which was insisted on by the counsel, that under this provision of the Constitution the citizens of the several States are permitted to participate in all the rights which belong exclusively to the citizens of any other State, merely on the ground that they are enjoyed by those citizens.* Much less, that in regulating the common property of the citizens of such State, the Legislature is bound to extend to the citizens of all the other States, the same advantages as are secured to their own citizens."

This decision is made by a very learned Judge, and it is entitled to great weight. I think it determines this case. Even if we were to yield one strong point here, that colored persons are not citizens, we then have the authority of this case, that the section will not warrant the construction claimed by the other side.

Judge Washington says, that he cannot accede to the proposition, that under this provision of the Constitution the *citizens* of the several States, are permitted to participate in *all* the rights which belong to the citizens of particular States, merely on the ground that they are enjoyed by those citizens. And so you will say, should it be claimed otherwise. These privileges and immunities may be enjoyed, but this learned Judge adds, "they must nevertheless be subject to such restraints as the government may justly prescribe for the *general good of the whole.*

Now all the restraint imposed in this case, is for the instructor setting up the school. *first to obtain in writing, the consent of the civil authority and select-men of the town.* This surely is for the general good of the whole, and is indeed a provision which in a very few years may be necessary to our political existence.

Sure I am, if the establishment of a school embraces any *good* object. the licencing board provided by the act, will readily give their consent—but if it be for a bad object—a dangerous scheme, then the board ought to deny its licence, and thus check the progress of immorality. This restriction is no more unjust than the restriction imposed upon an ordinary district school. It places both within the power of the visitors in the one case, and the select-men and civil authority in the other. Let it be remembered, that no individual can instruct a district school in Connecticut, according to the law long established, unless he shall obtain a certificate in writing from the board of visitors. Is this law unconstitutional? Let this question be answered.

Should it be pressed upon you, that the defendant in this case must not be convicted, because black men, the sons of Africa, served in the war of the revolution, and many of them are now receiving at the pension office, the bounty of the government, you will allow me to say. this is fallacious indeed, and would never be urged for any other purpose than to mislead and deceive the honest and unsuspecting. It is a mere finesse. True, some of the black men were soldiers —they served with fidelity—but you well remember that there is no State in the Union which does or can subject a black man to military duty. They are, and ever have been exempt. By the law of Congress of 1792, they are exempts, because they were not citizens. By all the colony laws, it

was the white man alone, who was compelled to perform military duty—who was compelled to defend his country. Those were volunteers in that war, but *that* never made them citizens. The Hessians, the French, as well as the Africans were volunteers in that glorious cause, but who ever before supposed, that services of this sort made them *citizens*. ? "*scout the idea*," and send it back to him who gave it utterance.

The *Declaration of Independence* has been quoted to sustain the argument, but go back with me, and see whether that declaration will not disprove the proposition. *When* was that declaration made—by *whom* was it signed—and against *whom* did it speak? It does say that "*all men are created equal.*" But who does not know, that on the 4th of July, 1776, every Colony or State tolerated slavery—they had laws to hold their slaves in bondage. Still more, perhaps every signer of that declaration, was himself a *slave-holder*, and that declaration did not dissolve those bonds, nor break up the fetters of slavery. The *object* of that declaration was a dissolution of their connection with a *foreign government*.—The tyranny of Great-Britain—the misrule of a king, and the oppression of a corrupt ministry, were to be thrown off.—*These* were the evils complained of, and the declaration of Independence applied to *those evils*, and those alone.—Hence you see, that there ever has been in this country, a marked difference between the black and the wite men. There is still that difference, and it is impossible to do it away. Those who claim to be the *exclusive philanthropists* of the day, will tell you this is prejudice. I give it no such name. It is entitled to no such appellation. It is *national pride* and *national honour* which mark this distinction. The white men were oppressed and taxed by the king—they assembled in Convention, and at the peril of their lives declared this *white nation* free and independent. It was a nation of *white men*, who formed and have administered our government, and every American should indulge that *pride* and *honor*, which is falsely called prejudice, and teach it to his children. Nothing else will preserve the *American name*, or the *American character*. Who of you would like to see the glory of this nation stripped away, and given to another race of men? Give up this distinction, and you part with all which makes the name of an American our pride and boast. Injured Africa, it is said, calls for your verdict of acquittal in this case.—Those who make this appeal, seek only to move your passions. This is not the way to heal the wounds which have been inflicted on Africa. This is not the method to redeem Africa. There is a better mode. As patriots you

are not called upon to abandon your own country for Africa. Let your brethren of the South return their slaves to their own native land. Nothing is wanting but the means, and if the abolitionists would take half the pains to obtain the means they now do to retard the progress of benevolence, much would be done. Instead of aiding in this mighty work of preservation—of saving our own country, and redeeming Africa, there is a class of men, even in New-England, who would prefer to have the slaves loosed from their chains and brought to Connecticut, in such manner as to overwhelm our own inhabitants. We deserve no such visitation, and shall never submit to it, so long as we are free. Connecticut was the second State in the Union to rid itself of slaves, and now shall she lay down, and quietly behold the flood of emigration which must pour in upon us, when the gates are thrown open? The present is a scheme, cunningly devised, to destroy the rich inheritance left by your fathers. The *professed* object is to *educate* the blacks, but the *real* object is, to make the people yield their assent by degrees, to this universal amalgamation of the two races, and have the African race placed on the footing of perfect equality with the Americans. If this be not so, why are the leaders of this scheme so anxious to withdraw their black scholars from excellent schools in the city of New-York, where they belong, and force them upon Connecticut, in violation of our law, placing them at the same time, at a school inferior in every respect to those in their own city? This small cord is first to be sounded, a larger one will next vibrate. There are now seven valuable schools in the city of New-York, located at convenient places—provided with able teachers—books and apparatus of every kind, and at this moment vacant places for more than three hundred scholars—where they can be educated *free*, if they choose, if *education* be their object. But this does not serve the purpose. There is something else needed beside an education. This, they can have at home.

Those men with their millions, are willing to withdraw pupils from such schools, and send them here, perhaps, because their own particular tenets can be the better inculcated here. This is but an experiment, and should it succeed, then every town in this State will be liable to be visited in the same way. This is not the case of the town of Canterbury alone, against Prudence Crandall, the mere nominal defendant, put forward by others, whose machinations would disturb the tranquility of this whole nation, but it is *the case* of the State of Connecticut, and every town, however remote, and every citizen, however unconcerned, has involved in it, a deep interest. Let the law be pronounced unconstitutional, by this high tribunal, and a correspond

ing school for males will be immediately established in some other town. This will compel the white children of these towns to be sent abroad for education, and, in the end, it will drive from these towns their valuable inhabitants. In a very few years the evil will be spread over the State. The law in question is made for the preservation of the State. Public policy demands it. The existence of the State requires its faithful execution. Its resistance is only for the purpose of sowing the seeds of disquiet at the South, and let it not be said, that a Jury in Windham county, commenced the work of dissolving the Union. I leave this case in your hands, trusting that you will return a verdict which shall do honor to yourselves and your country.

CHARGE.

"This is an information filed by the Attorney for the State for the alledged violation of a Statute law, passed by the General Assembly, at their last session, relating to inhabitants; the preamble to the act, embracing the reasons for the law. It reads thus:

"Whereas attempts have been made to establish literary institutions in this State, for the instruction of colored persons belonging to other States and countries, which would tend to the great increase of the colored population of the State, and thereby to the injury of the people; Therefore it is enacted that no person shall set up or establish, in this State, any school, academy, or literary institution, for the instruction or education of colored persons who are not inhabitants of this State, nor instruct or teach in any school, academy, or literary institution, or harbor or board, for the purpose of attending or being taught, or instructed in any such school, any colored person not an inhabitant of any town in this State, without the consent, in writing, first obtained of a majority of the civil authority and select men of the town where such school is situated, on penalty," &c.

It is alleged in this information, that since the 22d day of August last, to wit, on the 24th day of September 1833, the defendant has wilfully and knowingly, harbored and boarded colored persons not inhabitants of the State, for the purposes mentioned in said act, without having obtained in writing, the consent of the civil authority and select men of the town of Canterbury, where the school had been set up.—As to the facts in this case, there seems to be but little controversy. It has scarcely been denied, that colored persons have been harbored and boarded by the defendant, for the objects alleged, within the time set forth in this information. You, Gentlemen of the Jury, have heard the evidence, and as it is your exclusive business to pass upon these facts, you will say whether or not they are true.

If these facts are not proved to your satisfaction then you may dismiss the case, for in that event, you have no further duty to perform. If however, you find the *facts* true, then another duty equally important, develoves upon the jury. It is an undeniable proposition, that the jury are judges of both law and fact, in all cases of this nature. It is, however, equally true, that the Court is to state *its* opinion to the jury, upon all questions of law, arising in the trial of a criminal cause, and to submit to their consideration, both law and fact, without any direction how to find their verdict.

The counsel for the defendant, have rested her defence upon a provision of the Constitution of the United States, claiming that the statute law of this State, upon which this information is founded, is inconsistent with that provision, and therefore void. This is the great question involved in this case, and it is about to be submitted to your consideration.

It is admitted that there are no provisions in the Constitution of this State, which conflict with this act.—It may be remarked here, that the Constitution of the United States, is above all other law,—it is emphatically the supreme law of the land, and the judges are so to declare it. From the highest Court to the lowest, even that of a Justice of the Peace, all laws, whether made by Congress or State Legislatures, are subject to examination, and when brought to the test of the Constitution, may be declared utterly void. But in order to do this, the Court should first find the law contrary, and plainly contrary to the Constitution. Although this may be done, and done, to, by the humblest Court, yet it never should be done but upon a full conviction that the law in question is unconsitutional.

Many things said upon this trial, may be laid out of the case. The consideration of Slavery, with all its evils and degrading consequences, may be dismissed, with the consideration that it is a degradiug evil. The benefits, blessings and advantages of instruction and education, may also cease to claim your attention, except you may well consider that education is a 'fundamental privilege,' for this is the basis of all free governments.

Having read this law, the question comes to us with peculiar force, does it clearly violate the Constitution of the United States? The section claimed to have been violated, reads as follows, to wit: Art. 4—sec. 2. 'The citizens of each State, shall be entitled to all privileges and immunities of citizens in the several States.' It has been urged that this section was made to direct, exclusively, the action of the General Government, and therefore can never be applied to State laws. This is not the opinion of the Court. The plain and obvious meaning of this provision, is, to secure to the *citizens* of all the States, the same privileges as are secured to our own, by our own State laws. Should a citizen of Connecticut purchase a farm in Massachusetts, and the Legislature of Massachusetts tax the owner of that farm, four times as much as they would tax a citizen of Massachusetts because the one resided in Connecticut and the other in Massachusetts; or should a law be passed by either of those States, that no citizen of the other, should reside or trade in that other, this would undoubtedly be an unconstitutional law, and should be so declared.

The second section was provided as a substitute for the 4th article of the *Confederation*. That article has also been read, and by comparing them, you can perceive the object intended by the substitute.

The act in question, provides that colored persons, who are not inhabitants of this State, shall not be harbored and boarded for the purposes therein mentioned, within this State, without the consent of the civil authority and select men of the town. We are then brought to the great question, are they *citizens* within the provisions of this section of the Constitution? The law extends to all persons of color not inhabitants of this State, whether they live in the State of New York, or in the West Indias, or in any other foreign country.

In deciding this question, I am very happy that my opinion can be revised by the Supreme Court of this State and of United States, should you return a verdict against the defendant.

The persons contemplated in this act are *not citizens* within the obvious meaning of that section of the Constitution of the United States, which I have just read. Let me begin by putting this plain question. Are *slaves* citizens? At the adoption of the Constitution of the United States, every State was a slave State. Massachusetts had begun the work of emancipation within her own borders. And Connecticut, as early as 1784, had also enacted laws making all those free at the age of 25, who might be born within the State, after that time. We all know that slavery is recognized in that Constitution, and it is the duty of this Court to take that Constitution as it is, for we have sworn to support it. Although the term 'slavery' cannot be found written out in the Constitution, yet no one can mistake the object of the 3d section of the 4th article :—'No person held to service or labor in one State, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered upon claim of the party to whom such service or labor may be due.'

The 2d section of the 1st article, reads as follows :— Representatives and direct taxes, shall be apportioned among the several states which may be included in this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of *all other persons*.' The 'other persons' are slaves, and they became the basis of representation, by adding them to the white population in that proportion. Then slaves were not considered citizens by the framers o the Constitution.

A *citizen* means a *freeman*. By referring to Dr. Webster, one of the most learned men of this or any other country, we have the following definition of the term—'Citizen: 1st, a native of a city, or an inhabitant who enjoys the freedom and privileges of the city in which he resides. 2. A townsman, a man of trade, not a gentleman. 3. An inhabitant; a dweller in any city, town or country. 5. In the United States, it means a person native or naturalized, who has the privilege of exercising the elective franchise, and of purchasing and holding real estate.'

Are Indians citizens? It is admitted in the argument that they are not, but it is said they belong to distinct tribes. This cannot be true, because all Indians do not belong to a tribe. It may be now added, that by the declared law of New York, Indians are not citizens, and the learned Chancellor Kent, says 'they never can be made citizens.' Indians were literally natives of our soil,—they were born here, and yet they are not citizens.

The Mohegans were once a mighty tribe, powerful and valiant; and who among us ever saw one of them performing military duty, or exercising, with the white men, the privilege of the elective franchise, or holding an office? And what is the reason? I answer, they are not citizens, according to the acceptation of the term in the United States.

Are *free blacks*, citizens? It has been ingeniously said, that vessels may be owned and navigated by free blacks, and the American flag will protect them; but you will remember that the Statute which makes that provision, is an act of Congress, and not the Constitution. Admit, if you please, that Mr. Cuffee, a respectable merchant, has owned vessels, and sailed them under the American flag, yet this does not prove him to be such a citizen as the Constitution contemplates. But that question stands undecided by any legal tribunal within my knowledge. For thepurposes of this case it is not necessary to determine that question.

It has been also urged, that as colored persons may commit treason, they must be considered citizens. Every person born in the United States, as well as every person who may reside here, owes allegiance of some sort, to the government, because the government affords him protection. Treason against this government, consists in levying war against the government of the United States, or aiding its enemy in time of war. Treason may be committed by persons who are not entitled to the elective franchise. For if they reside under the protection of the government, it would be treason to levy war against that government, as much as if he were a citizen.

I think Chancellor Kent, whose authority it gives me pleas-

ure to quote, determines this question by fair implication. Had this authority considered free blacks citizens, he had an ample opportunity to say so. But what he has said, excludes that idea.

Kent's Commentaries, vol. 2d, p. 258. "In most of the United States, there is a distinction in respect to political privileges, between free white persons and free colored persons of African blood; and in no part of the country do the latter, in point of fact, participate equally with the whites, in the exercise of civil and political rights. The African race are essentially a degraded caste, of inferior rank and condition in society. Marriages are forbidden between them and whites in some of the states, and when not absolutely contrary to law, they are revolting, and regarded as an offence against public decorum. By the revised statutes of Illinois, published in 1829, marriages between whites and negroes, or mulattos, are declared void, and the persons so married are liable to be whipped, fined and imprisoned. By an old Statute of Massachusettss, of 1705, such marriages were declared void and are so still. A similar statute provision exists in Virginia and North Carolina. Such connexions in France and Germany, constitute the degraded state of concubinage, which is known in the civil law. But they are not legal marriages, because the parties want that equality of statues or condition, which is essential to the contract."

I go further back still. When the Constitution of the United States was adopted, every state, (Massachusetts excepted) tolerated slavery. And in some of the states, down to a late period, severe laws have been kept in force regarding slaves. With respect to New-York, at that time her laws and penalties were severe indeed, and it was not until July 4th, 1827, that this great state was ranked among the free states.

To my mind, it would be a perversion of terms, and the well known rule of construction, to say, that slaves, free blacks, or Indians, were citizens, within the meaning of that term, as used in the Constitution. God forbid that I should add to the degradation of this race of men, but I am bound by my duty to say, they are not citizens.

I have thus shown you that this law is not contrary to the 2d section of the 4th Art. of the Constitution of the United States, for that embraces only citizens.

But there is still another consideration. If they were citizens, I am not sure this law would then be unconstitutional. The Legislature may regulate schools. I am free to say, that education is a fundamental privilege; but this law does not prohibit schools. It places them under the care of the civil authority and select men, and why is not this a very suitable regulation? I am not sure but the Legislature might

make a law like this, extending to the white inhabitants of other states, who are unquestionably citizens, placing all schools for them under suitable boards of examination, for the public good, and I can see no objection to the board created by this act.

What can the Legislature of this State do? It can make any law, which any Legislature can make, unless it shall violate the Constitution of the United States, or the Constitution of its own State, and in my opinion *this* law is not inconsistent with either.

The Jury have nothing to do with the popularity or unpopularity of this or any other law, which may come before them for adjudication. They have nothing to do with its policy or impolicy. Your only enquiry is, whether it is constitutional.

I may say with truth, that there is no disposition in the judicial tribunals of this State, nor among the people, to nullify the laws of the State, but if constitutional, to submit to them, and carry them into full effect, as good citizens. If individuals do not like the laws enacted by one Legislature, their remedy is at the ballot boxes. It often occurs, on subjects of taxation, that laws are supposed by some, to be unjust and oppressive. Nearly every session of the Assembly, attempts have been made to alter and change such laws, but as long as they exist, they must have effect.

You will now take this case into your consideration, and notwithstanding my opinion of the law, you will return your verdict according to law and evidence. I have done my duty, and you will do yours."

The jury returned a verdict against the defendant.

The Joint Committee of the General Assembly made the following report, May Session, 1833, and thereupon the law passed:

REPORT.

To the General Assembly:—The Committee to whom was referred the petition of the town of Canterbury, and others, respectfully report, that they have attended to the subjects submitted to their consideration.

The condition of the colored population throughout the United States, and its influence on society, ought to command the attention of every Legislature. The slave trade commenced centuries ago, and about eighty millions of the human race have been its victims. They have suffered death in various and cruel forms, or have been left to drag out a miserable existence in the most abject slavery. Nations and individuals have been engaged in the horrid traffic, and our own country has participated

deeply in its guilt; but the trade is now forbidden by the general government, under the penalty of death, and nations leagued together for its suppression. However effectual these measures may prove, it will be long before we cease to suffer from the evils entailed upon us by the slave trade.

That every prudent and wise means for their mitigation should be anxiously sought and adopted is not less enjoined by a regard to the welfare of society, than by the duties of humanity and justice.

It is about half a century since the Legislature of this State commenced a system for gradual abolition of slavery, and the great object has been consummated, still the unhappy class of beings, whose race has been degraded by unjust bondage, are among us, and justly demand at our hands, all which is consistent with the common safety, and their own best interest, for the amelioration of their state and character.

Our obligations as a *State*, acting in its sovereign capacity are limited to the people of our *own territory*. *Our* whole population of color, born within the last century, are already restored to the blessings of freedom. The Constitution and laws of the State have secured to them all the rights and privileges of other citizens, except that of elective franchise, and those to which it is essential. It is not contemplated for the Legislature to judge of the wisdom of that provision of the Constitution which denies that franchise to the people of color; but your Committee are not advised that it ever has been a subject of complaint. In every other point the white and colored population of *this State* are entitled by law to equal privileges. The latter, not less than the former, are within all the provisions which relate to education—they are alike protected in their persons and property, and in the exercise of every occupation and profession. They also enjoy a special exemption from the poll tax and military duty. In regard to the education of all those of that unfortunate class of beings who belong to this State, the Legislature ought not to impede, but so far a may be within their province, and consistent with the best interest of the people, to foster and sustain the benevolent efforts of individuals directed to that end. Here our *duties* terminate. The colored people of *other States* and *other countries*, are under the laws and guardianship of their respective sovereignties, and *we* are not entrusted with the powers of enquiring into the expediency or justice of their local regulations, except to acquire wisdom in regard to *our own*. Here are the boundaries of our Legislative rights and *duties*. We are under no obligation, moral or political, to incur the inculculable evils, of bringing into *our own State*, colored emigrants from abroad. For this we have the example of other members of our confederacy by whomslavery is tolerated. It is a fact confirmed by painful and long experience and one that results from the condition of the colored people, in the midst of a white population, in all States and countries, that they are an appalling source of crime and pauperism. As this, in our own State, proceeds from degradation to which their ancestors have been wrongfully subjected, it imposes on us an impe

ty, to advance their morals and usefulness, and preserve
far as possible from the evils which they have been
to inherit, but at the same time, the duty is not less im-
e, to protect *our own citizens*, against that host of color-
grants, which would rush in from every quarter, when
ed to our colleges and schools.

The memorials which have been referred to your Committee are signed by great numbers of respectable citizens who reside in different towns in this State. They have been occasioned by repeated efforts made to establish literary institutions, embracing in their objects, the colored people from *other* States and Countries.

The citizens of those places, where the establishment of those seminaries has been attempted, have manifested toward them a united and very ardent opposition, grounded as your Committee believe, on most reasonable apprehensions of their effects, especially on the places of their injurious location.

Although the introduction of colored persons for the purpose of education merely, would seem to contemplate but a temporary residence, yet that class of people have seldom any settled establishment in their own States, or other inducements to return after the period of instruction has expired; and as their associations and attachments would be here;—a great portion of the whole number would make this State their permanent residence. The immense evils with such a mass of colored population, as would gather within this State, when it has become their place of resort from *other States* and from other countries, would impose on our own people burthens which would admit of no future remedy, and can be avoided only by timely prevention.

The records of criminal courts, prisons and asylums for the poor where great numbers prevail among a white population, admonish us of the dangers to which we are exposed, and evince the necessity, in the present crisis, of effectual legislative interposition.

Particular instances may occur in which the admission of a colored person belonging to any other State, to the privileges of a school, might be justified from peculiar circumstances. The several towns in which schools are located, must be the first and greatest sufferers from too liberal indulgence. It would seem both safe and just to place the subject under the direction of their own *civil authority and select men*. With a view to these objects, your Committee respectfully report the accompaning bill for a public act.

Respectfully submitted, per order of the Committee.

PHILIP PEARL, Jr. Chairman